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August 28, 1995

ROBERT L. HEALD
(1956-1983)
PAUL D.P. SPEARMAN
(1936-1982)
FRANK ROBERSON
(1936-1981)
RUSSELL ROWELL
(1948-1977)

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FEDERAL COMMUNICATIONS COMMISSION
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VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

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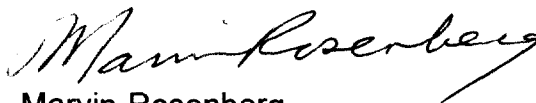
Re: MM Docket No. 95-90 - Review of the
Commission's Regulations Governing
Broadcast Television Advertising

Dear Mr. Caton:

Transmitted herewith, on behalf of Hubbard Broadcasting, Inc., which directly or through wholly-owned subsidiaries owns several network affiliated television stations, is an original and 4 copies of its Comments in the above-referenced docket.

Should there be any questions concerning this matter, please contact the undersigned.

Very truly yours,



Marvin Rosenberg
Counsel for
Hubbard Broadcasting, Inc.

MR:ik
Enclosure

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Review of the Commission's) MM Docket No. 95-90
Regulations Governing Broadcast)
Television Advertising)

COMMENTS OF HUBBARD BROADCASTING, INC.

Hubbard Broadcasting, Inc. "(Hubbard)", by its counsel, hereby submits its Comments in the above-captioned proceeding and requests the Commission to retain the present Section 73.658(i) of its Rules and Regulations. In support whereof, it is respectfully stated as follows:

Preliminary Statement

Hubbard, directly or through wholly-owned subsidiaries, owns and operates KSTP-TV, St. Paul, Minnesota, and WDIO-TV, Duluth, Minnesota, affiliates of the American Broadcasting Company, Inc.; KOB-TV, Albuquerque, New Mexico, an affiliate of the National Broadcasting Company, Inc., and WTOG, St. Petersburg, Florida, an affiliate of the United Paramount Television Network.¹ Thus, Hubbard has a direct interest in having the present rule - 47 CFR §73.658(i) - retained. The Hubbard stations are represented nationally by Petry Television, Inc., and in addition to the direct

¹Hubbard, directly or through wholly-owned subsidiaries, owns and operates KSAX-TV, Alexandria, Minnesota and KWRF, Redwood Falls, Minnesota, satellites of KSTP-TV; WIRT, a satellite of WDIO-TV; and KOB-F, Farmington, New Mexico, a satellite of KOB-TV. The Stanley S. Hubbard Trust operates KOB-R, Roswell, New Mexico, a satellite of KOB-TV.

representation of the stations in sales, Petry provides other services to the Hubbard stations such as advice and information on advertising sales trends, syndicated program acquisitions, sales materials, sales marketing ideas, etc. A station sales representative and the station have a common goal of maximizing the station's sales; whereas, as will be shown below, a network, acting as a sales representative for a station, may well be at cross-purposes with the station.

Need for Retention of Rule

The networks' primary goal in the sale of time for commercial advertising to national accounts is to sell time within its network programming since this source of revenue together with revenues earned from the networks' owned and operated stations constitute the overwhelming bulk of a networks' revenues. While the majority of network affiliated stations receive compensation from the network for broadcasting network programming, to be economically successful, affiliates depend on the sale of spot time on their stations. Thus, the networks and station affiliates do not have the same goal. The networks are motivated to sell time on the networks rather than being motivated to sell time on local affiliated stations; whereas, the local station's obvious interest is in having national sales made on its behalf.

National advertisers purchase network time to reach a national audience, while spot time on local stations is purchased to reach a local or regional market. National advertisers buy time on local stations to support network advertising in particular locales, to concentrate on regional marketing plans due to seasonal variances, to test market new or changed products, to account for variances in the acceptance of a product within different regions, and for other reasons. When local stations are represented by

independent station sales representatives, as stated above, there is a mutuality of interest in maximizing the sale of time on the station. The networks, on the other hand, while they may not seek to discourage the complete sale of time on local affiliates, nevertheless seek to direct national advertisers to expend the majority of their budget on network time.

If the Commission's present Rule on network sales representation was to be deleted, networks could bring significant pressure to bear on local affiliates to enter into sales representation agreements with the networks. Although there may have been a recent increase in the number of networks - UPN, Warner - the four primary networks continue to have a strong hand in dealing with affiliates. Although network affiliate agreements are being signed for longer terms (i.e. up to ten years), the agreements often set forth more stringent provisions regarding network preemptions.

The recent changes in the prime time access rule and financial interest syndication rule are likely to cause the networks to bargain harder with affiliates as the networks seek to assure the broadcast of their own programming. With the proposed increase in the national audience reach and the likely elimination of the number of stations which one entity may own, networks will further increase their bargaining strength in negotiating with affiliates. As networks increase ownership in large markets, it will in turn weaken the ability of stations in middle and smaller markets in their negotiations with networks where network compensation is more significant to making a station economically successful. Thus, the networks will be able to bring increased pressure on such stations to enter into sales representation agreements. The end result will be an expected economic weakening of such stations with a resultant adverse effect

on the ability to present local news and public affairs programming.

The Commission has stated that one of its major objectives is to encourage competition which will translate into maximizing the diversity of viewpoints. If the networks assume the dual role of representing themselves and their affiliates, it may be expected that there will be a reduction in the present level of competition between the networks and local stations for the advertising dollar with the loser being the local stations. Normally, local spot advertising is in third position when national advertisers budget their spending: the order of priorities is network advertising, advertising within syndicated programming and then local spot buys. Since the latter is already third, any diminution in these sales revenues could only adversely affect the local stations and their ability to program.

Station representation firms conduct their own economic and program research and inform their clients of the results of that research. Such input from station representatives are often taken into consideration by the local stations in making syndicated program buys or in determining local preemptions. Since a network's interest is in having an affiliate carry its programming and not engage in network preemptions, the networks cannot be expected to provide the same type of information that the local station receives from its present sales representative firm. Thus, the Commission's objective of diversity in programming will be adversely affected if the present network sales representative rule is eliminated.

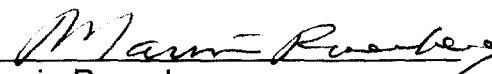
To seek to maintain the present level of competition and program services, Section 73.658(i) should be maintained. In the old axiom, if it is not broke, leave it alone.

CONCLUSION

The present rule has served the public and advertising community extremely well. It has provided robust competition between the networks and their affiliates and has been in the best interests of the advertising community. The public has benefited from the economic viability of the local television stations, as the present system has fueled the dollars for local stations to provide news and public affairs programming. The public has further benefited from the diversity of programming created through the presentation of syndicated programming and sports and informational programming. The present rule should be retained.

Respectfully submitted,

HUBBARD BROADCASTING, INC.

By: 
Marvin Rosenberg

Its Attorney

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